

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1138 of 1997

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JASMABEN SANJAYBHAI SHAH

Versus

STATE OF GUJARAT

Appearance:

MR SHAKEEL A QURESHI for Petitioners

MS VALIKARIMWALLA APP for Respondent No. 1

MR DR DHIMAR for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 05/08/98

ORAL JUDGEMENT

Heard learned advocates for the respective parties. Petitioner No. 1 before this Court is wife of respondent No. 2 and the petitioners Nos. 2 & 3 are the parents of the petitioner No. 1. It appears that the petitioner was married to respondent No.

2 some three years ago. However, she has been estranged from her husband and has been residing with her parents. On 12th August, 1997, respondent no.2 filed Criminal Misc. Application No. 140 of 1997 before the learned JMFC, Bardoli under Section 91, 93 and 97 CrPC. He contended therein that his wife, the petitioner No. 1 herein, was illegally confined by her parents against her wishes and that the petitioners had taken away ornaments, listed in paragraph 3 of the application from the house of the respondent no. 2 in his absence. On the same day, the learned Magistrate directed to issue Search Warrant in respect of the alleged illegal confinement of the petitioner no.1 and also directed to issue show cause notice in respect of the ornaments. Pursuant to the said order, petitioner no. 1 was brought before the Court of learned Judicial Magistrate, First Class, Bardoli on 27th August, 1997. She made a statement before the learned Magistrate that she did not wish to reside with the respondent No. 2 and she wanted to reside with her parents. Thus, the allegation of illegal confinement having been disproved, the application in respect of search of petitioner No. 1 with regard to alleged illegal confinement was dismissed. However, application in respect of ornaments was kept alive and was ordered to be heard on 11th September, 1997. Feeling aggrieved, the petitioners had preferred the present petition.

Mr. Qureshi, the learned advocate appearing for the petitioners has submitted that Section 91 CrPC confers power upon the Court or any other officer incharge of the Police Station to summon production of any document or other thing which is considered necessary or desirable for the purpose of any investigation, inquiry or trial or other proceedings under the Code, pending before such Court or Officer. Mr. Qureshi has submitted that no proceeding whatsoever is pending before the learned Magistrate and the learned Magistrate could not have exercised powers to summon production of things under Section 91 or Section 93 CrPC as has been done in the present case. He has, therefore, submitted that the exercise of power by the learned Magistrate by issuing show cause notice on 12th May, 1997 in respect of production of ornaments is without the jurisdiction and requires to be quashed and set-aside. Similarly, the order made on 27th August, 1997 also is without jurisdiction and requires to be quashed.

Learned advocate Mr. Dhimar has appeared for respondent No. 2 and has contested the petition. He has submitted that the application made under Section 91 CrPC is a proceeding lodged before the learned Magistrate and

it was in the course of said proceeding that the learned Magistrate had ordered to issue show-cause notice in respect of production of the ornaments. He has further submitted that the petition is premature and the present petitioners could have appeared before the learned Magistrate at Bardoli and raised the very defence.

Mr. Qureshi is right in contending that no independent power of production of document or thing has been conferred upon the Court under Section 91 CrPC. The order directing to issue show cause notice on 12th August, 1997 and the order made on 27th August, 1997 in respect of production of ornaments are, therefore, ex facie bad and contrary to law. The contention raised by Mr. Dhimar that the application itself is a proceeding under the Code cannot be accepted. Further, petitioners who are residing at Rajkot should not be compelled to appear before the learned Magistrate at Bardoli in respect of the proceeding which is ex facie not maintainable.

For the reasons recorded above, petition is allowed. The orders made by the learned Judicial Magistrate, First Class, Bardoli in Criminal Misc. Application No. 140 of 1997 on 12th August, 1997 and 27th August, 1997 are, therefore, quashed and set-aside. Rule is made absolute. There shall be no order as to costs.

Prakash*